

No. 4

S C Y L L A

MORE DANGEROUS THAN

C H A R Y B D I S.

BY

A FRIEND OF LIBERTY,

AND OF

THE CONSTITUTION OF ENGLAND.

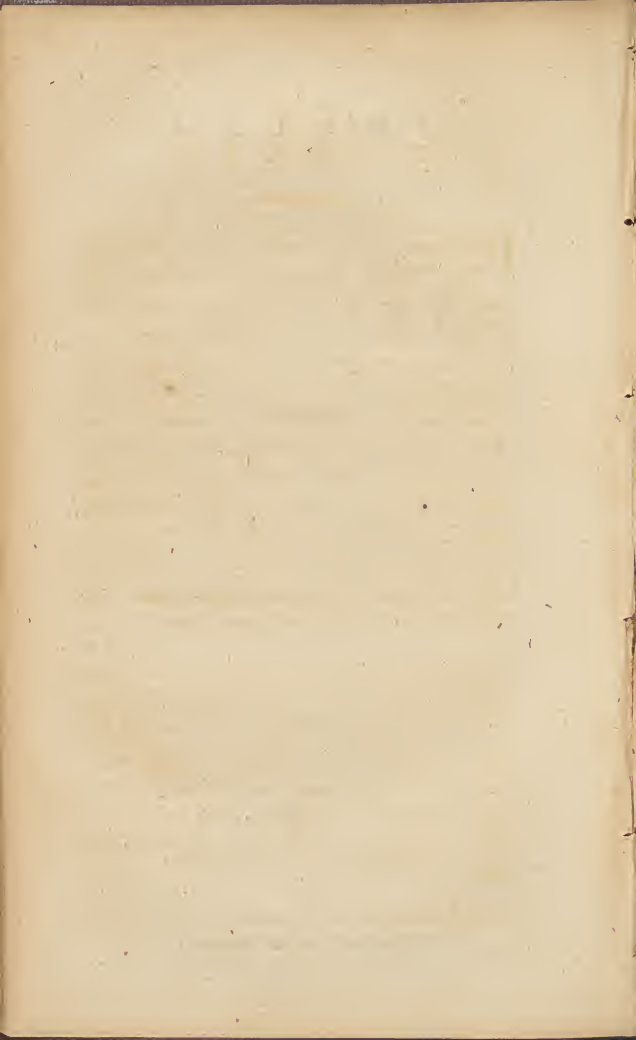
Incidit in Scyllam cupiens evitare Charybdim.

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TO THE
P U B L I C.

IT appears to the author of the following short treatise, that the *preservation of our constitution* depends chiefly upon the aid given by good citizens to the EXECUTIVE POWER, in all cases where the constitution is attacked internally, and that jurymen are particularly called upon for that purpose, in cases of sedition, because, as the freedom of Englishmen only admits of the guilty being tried by his peers, it follows, that if ever the time should come when juries, deceived by abstract reasonings, shall consider incendiaries and innovators as well-meaning reformers, there will then be an end of all free government.

As the reasoning on this subject is free from all personality, as no facts are alluded to that are not of public notoriety, the name of the author being of no importance in pure argument, or known truths, is suppressed. Arguments are never listened to with so unprejudiced a mind, as when it is unknown from whom they come.

April 20th, 1794.

SCYLLA

MORE DANGEROUS THAN

CHARYBDIS.

NATURE has given to all the animal creation in a greater or less degree some physical means of self-preservation, and to every animal without exception, the instinctive propensity to employ those means.

Some animals have strength for their protection, others have swiftness and others address; some are protected by the hardness of their skin; numbers by their insignificance; and the unerring principle of instinct gives to every creature, from the Elephant to the Fly, a desire of preserving itself, so that the means which nature furnishes of self-protection are continually employed by a will *completely perfect*.

What we observe in the thousands of animals large enough for our organs to examine, might probably be traced with equal success through those myriads of insects and animalcules, which
compose

compose the minute inhabitants of God's creation.

But it is not in animals alone that this principle is to be traced, for even in the vegetable world we may observe, that some kind of protection from strength, flexibility, or situation, is given to all; thus the lofty Oak that resists the winds, is not more secure than the reed which bends and lets the blast pass over.

Thus in all natural existences the means of preserving the object from natural accidents is provided by the Creator of all.

When men can take Nature for their original, they run no risk in making a copy, and it requires no great depth of understanding to see that the different political combinations formed for the happiness or conveniency of mankind, admit of, and require an application of the principle here mentioned.

Every institution of men should either be of such a nature as to have no enemies, or some method of protection against attacks should exist with the system itself. To apply this general reasoning to the particular point in view, our constitution ought to provide a method of protecting itself against all attacks, either from external or internal enemies; without which provision, should enemies appear, its destruction is to be apprehended.

Whatever might be the opinions of those patriots, to whose great abilities and extended views we are indebted for so excellent a constitution, it would appear at present, that some of those who claim the merit of guarding it are not near so anxious for its existence, as they are for its existence in a certain way. They seem to think like the Doctor in Moliere's Comedy, that
a man

a man kill'd is but a man kill'd, but that a man saved contrary to the rules of phyfic, is a material injury done to the profession.

The guardians of our constitution, unlike the angel who protected the passage into the terrestrial paradise, whose flaming sword turned every way, have turned all their efforts one way. To protect the constitution against the *Royal prerogative*.

Let us inquire, whether this formidable Royal prerogative merits all this attention, and whether there is not a greater danger: and if so, what that greater danger is?

A man awake and in full enjoyment of his natural faculties has his eyes open, but the moment that precious and vulnerable organ is menaced, he instinctively shuts them for protection; thus does the man become for a time blind, and loses the enjoyment of one of the most useful and agreeable of his senses, but it is for its preservation; and if men in society do not consider that a temporary abandonment, or rather diminution of some of their political rights may in certain cases be necessary, they certainly incur a risk of losing, sooner or later, the whole.

Men are so far from being perfect, that we find them in general either with ease and indolence submitting to arbitrary sway, or else too jealous of their liberty; in which state they render themselves incapable of enjoying that liberty, by being captious and restless.

The Romans seem of all ancient nations best to have understood the manner of combining liberty and security. Upon particular emergencies, for the security of the whole, the almost absolute power of a dictator was submitted to without a murmur by these masters of the world. But the dangers

dangers of Rome strengthened by a perpetual war establishment, surrounded by nations far inferior in military genius, in civilization, and from want of union in those nations, not exposed to any combined or continued efforts either of resistance or attack, were far inferior to those of Britain, and of a very different nature.

The dangers of the Roman republic were not of so subtle and so multiplied a nature as ours, since the invention of Printing has given to political society a new means of multiplying and communicating either knowledge or discontent, and since the philosophy applicable only to abstract reasoning has been cried up by the lovers of anarchy, as capable of being put in practice, and rendering the human race happy.

In cases similar to those, where the Roman republic named a Dictator, the British constitution permits the suspension of the *Habeas Corpus* act, that is, in cases of imminent and great danger, and so far may our constitution be said to have that power for self-defence, so necessary to every institution; but we have no inferior means of protection in less urgent cases, and it is here that our liberties are endangered. We have not the means of preventing a crisis, which, when it comes on, brings with it two dangers to our liberties; first, that arising from the crisis itself, the extent of which must always be uncertain; and secondly, that arising from the extraordinary powers then vested in the crown, which, to men jealous of prerogative, ought to appear no trifling danger.

To avoid the possibility of such emergencies, when the legislative becomes of necessity subservient to the executive power, might it not be great wisdom to confer upon the latter the means

of preventing those emergencies, without extending the prerogative to any dangerous degree?

Let us learn from the conduct and conversation of our enemies, for it is not unfrequently the case that they know our weak points better than we do ourselves.

It could be proved, if necessary, that when the democratic principles first took deep root in France under the constituent assembly, and when those false apostles of liberty determined to destroy all existing governments, which happened early in 1790, they studied the means of attack suitable to the genius of different people, and different governments.

Talents were by no means wanting among those who headed the French Revolution, and the English government was tolerably well understood by them, because in the silence of the closet for many years it had been studied by those very men who were now preparing to destroy it for ever.

The love of Englishmen for liberty, and their jealousy of the executive government, formed the hopes of our enemies: "London," said they, "was very nearly reduced to ashes in the year 1780, before government could find means to quell a riot of boys and blackguards, and the King of England saw himself in danger in his own palace without having the power to call his friends and servants to his aid, as any country gentleman would have done to protect a neighbouring village. So far did the jealousy of the English then carry them, and we may reckon upon the same disposition. But if these open acts of pillage and revolt were permitted to pass unpunished till the danger was great and evident to all, how much more easy is it by seditious writings and discourses to create

discontent, particularly as every man who pretends to be a friend of liberty finds many protectors and admirers in England, and for prosecuting such men the court quickly becomes odious, inso-much that juries cannot be found to condemn them." Thus it is, that by the very jealousy of the people in its favour, we may lay low the fabric of the English liberty.

Such was the plan laid in the beginning of 1790; and the destruction of this plot, which was brought about by the active measures of administration in the beginning of November 1792, was the death blow to that party which had contrived it in France. Whatever ridicule may be attempted to be thrown upon the alarmists, as the seditious affect to call them, it was the active and wise measures of administration, and the declared voice of the country at large, that saved us then from one of the most dangerous conspiracies that was ever formed against the liberties of any nation.*

To be free is the desire, and may very properly be made the aim of every rational man; but as perfection in any thing human is not to be attained, the limit at which to stop becomes a very essential inquiry.

By experience we have found, beyond a possibility of error, that individual happiness, which is the end and intention of every social compact, does not consist in the enjoyment of any one privilege, but of a number combined and blended

* It was the party of Mirabeau that laid this plan, and his party continued to have the first importance till Robespierre got the better in last May. The Girondist party, of which Petion, Brissot, &c. were the chiefs, were the persons who continued the same plan, but not with the same abilities, after the death of Mirabeau: it was the failure of the plot against England that brought about the execution of the twenty-one members last summer.

together :

together: and into this composition, for the sake of general good, then must enter many regulations, which, though they tend greatly to our happiness, are yet a restraint upon what is frequently called liberty.

Libels against the state, or against individuals, are the most dangerous foes to the public harmony or private peace, and therefore merit our strict attention.

That every individual should have the right of appealing to the laws of his country whenever there is made any attack upon his character and peace of mind, as he has when his person is assailed, is evidently just, at first sight; and that the executive power should have the same privilege for libels against the state, or for any writings or actions directed against the general peace and tranquillity of the country, is not less clear and evident; and if the nation, which the executive power represents, submits her cause to be tried by a jury against an individual aggressor, certainly it is not the individual who can complain, as to *the form* of trial, which puts him on a par with his country.

As to the manner of conducting a trial between the country and an individual, it is the same as between two private men, and is therefore liable to no objection; but the difference is, that the nature of a libel against the state may differ greatly from that against an individual, and herein lies the difficulty.

If defamation and slander between man and man take so many different forms, that no written laws can in all cases apply to them, with regard to government they vary yet infinitely more; and as the net must be constructed and spread, prepared according to the nature of the animals

that are to be caught, so must the law be made and applied according to the nature of the crimes that are to be punished.

Of cases that come into criminal courts there are two sorts; those where the intention is certainly criminal, and those where it is doubtful. Theft, for instance, is certainly always connected with an intention to steal, whereas murder is not always committed with a positive intention to kill, and therefore, though incomparably a crime of a more serious nature, may have many alleviating circumstances. In the former of these cases the jury can only determine the fact, and their functions are then at an end; but in the latter case an indictment for murder may be brought in manslaughter. If then in these cases the rights of jurymen alter, how much more must they do so in cases so infinitely varying as those of libels, and seditious actions.

Juries must in all such cases be made judges of the intention as well as of the fact, otherwise all trials would be superfluous, as none but fools would ever come within the written letter of the law, when there are so many ways of avoiding it.

But besides the infinite variety that exists in seditious matter, we find that what is sedition at one time may not be so at another, and vice versa, so that in many instances time and circumstances alone can lead a jury to a right determination.

A blow will kill a man at 70, or an infant, that would scarcely injure a man in the vigour of life, yet that will be no reason for acquitting the murderer of the old man or of the infant, because the person who gave the blow must know that, applied to the infirm or the tender, the blow was capable of producing death. It is not, therefore, even in material cases, the action alone, but

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the action combined with its probable consequences that constitutes the crime. This holds true with double force in cases where minds are to be acted upon, and not matter, because what is not capable of producing any evil effect upon the mind at one time, may at another produce a very bad one.

There is likewise the case of complicity to come in, which still varies the crime of sedition; for a man who stands alone as a teacher of sedition in times of tranquillity, is not so guilty as he who, finding there are numbers at work already, sets about assisting them; who is certainly so much more culpable, that he is so much more certain of obtaining his culpable end.

Without all this be taken into consideration, the application of the law to libellous and seditious acts may be censured and condemned, particularly if precedent is to be resorted to, because there certainly do exist publications, which, were they to make their appearance at this moment, would be punishable, but which were not so when they were published. The circumstances differ as much as if a man were to push his friend forward when standing on the brink of a deep river, or only on the edge of a pond; the cases would undoubtedly be very different, though the action in both would be the same. And it requires not any great stretch of reason to perceive, that it is not at the moment when the constitution of England is openly attacked by so many foreign emissaries, and when the desire of France to overturn it has been openly avowed, that any attempt should be made upon it at home; those at least who make such attempts cannot, at this time, expect to impose upon the world by concealing their intentions.

Not only is it the duty of juries to consider these circumstances, but it is the duty of the legislature to recollect upon this occasion a maxim that has hitherto been adhered to, which is to render the law severe according to the danger and frequency of a crime. Thus, for instance, forgery, one of the most dangerous crimes in a commercial country, was formerly but a petty offence, and was lately made capital, on account of its frequency and dangerous tendency: for certainly the moral turpitude is the same that it always was.

For the same reasons, then, that the legislature has wisely thought proper to augment the punishment for forgery, the executive power has put that law rigorously in force; and the same line of conduct ought to be followed by the legislative and executive power in respect to seditious persons, who would disturb the public peace; for as without rigour in the one case all confidence in commercial affairs would be destroyed, so also will all moderate and free governments be unable to subsist, if men are permitted with impunity to inflame the minds of the people, and disturb the public peace.

When necessity and public order do not require the severe execution of particular laws, it would seem, from universal precedent, that there is no blame incurred by suffering offenders against them to go unpunished. Thus, there are many acts of parliament in England that have never been repealed, but that likewise are never put in force: from this it is to be very fairly inferred, that laws are to be put in execution with severity or not, according as the state of society requires it. There cannot certainly rest a doubt in the mind of any reasonable man, that as punishments are dictated by the interests of society, rather than
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by those of morality, it is a duty of the legislative power to increase the punishments, and of the executive power to see them enforced, so far as the interests of the society may require : as also they should be mitigated upon all occasions, where mercy will not interfere with justice and sound policy. It is in conformity with this maxim that our English judges and juries, whom it would be difficult to praise more than they deserve, recommend mercy in all those cases where it can be done without setting a bad example ; and it is undoubtedly with this view that the constitution has given to the Sovereign the power of granting a free pardon. What a triumph is this for the good wisdom of our ancestors over the wretched philosophy of our bloody-minded contemporaries in France, who talk perpetually of the sword of the law, but who have blotted out the name of mercy from their vocabulary.

The severity, therefore, exercised upon particular occasions is not always to be considered as a fault ; on the contrary, it is the duty of judges to be severe whenever any certain species of guilt becomes frequent, or dangerous ; and certainly it would be difficult for the King to use his prerogative of pardoning upon a more improper occasion, or in a manner more dangerous to his people, than in cases of this nature.

Without there is in the executive power a right lodged of repelling every attack made upon the peace and happiness of the nation, as well those made upon the mind by writings and speeches, as by an armed force, such an executive power is incomplete, and inadequate to the purpose intended ; to that first of all purposes, *self-preservation*.

With respect to the manner of attacking the peace and surety of a political body, it is not in that by any means that the crime consists, nor is it that which renders defence necessary; for whether it be a printing-press that is employed to spread sedition, or a Spanish armada to invade, defence is equally necessary; and, in either case, it is equally the duty of the King to come forward with all means of protection in his power.

In proportion as the means of attack are multiplied, the means of defence must also be extended, and the powers given to those who are to defend us must be augmented. Thus, it was with the greatest propriety, and upon the most just and wise grounds, that parliament passed the alien bill, thereby giving a power to send away all such strangers as might by their actions tend to disturb the peace of this country, even without being under the necessity of giving any reason for so doing.

A people jealous of liberty ought to divide their attention between the general and entire preservation, and that protection which prevents its diminution.

If the only way that our liberties could be undetermined were by a gradual augmentation of the royal prerogative, then each question of prerogative would involve the general preservation of all our liberties; but there are many reasons for thinking, that a diminution of the prerogative would endanger liberty more than any augmentation that in common times can ever take place.

The history of this country shews, that from a very early period, our forefathers were very jealous of their liberties, and that they understood the

the foundation of liberty, if they did not comprehend all their rights. From this it has happened, that, in almost every contest with the sovereign, liberty has gained ground. If even in times when men ran no small personal risk in resisting oppression they maintained and extended their rights, so that liberty gained ground, how much more is it to be expected, that since the Revolution of 1688 has enabled them to do it without hazard, they will preserve them. Whatever may be said to the contrary, it is impossible to produce a single act passed since the Revolution that diminishes the rights then established; on the contrary, although there have been explanatory acts that in some cases may seem to be limitations, yet our rights have been augmented, better defined, and better secured.

No theme is so familiar, and, however unaccountable it may be, so agreeable to the human mind, as that of a lamentation for the degeneracy of the times, and the burthen of the song falls always upon what is most dear to us. Since Homer's time, (and probably in all times) men have had a strong propensity to praise and admire former ages, and even the human frame was supposed to have diminished both in size and in force.

The reforming orators of the present day seem to take this great master for their model, and the decline of liberty is their everlasting theme; nor, indeed, could they have chosen a better, nor any other so well calculated for captivating the discontented and the ignorant. The *days of good Queen Bess* are highly praised by many who are undoubtedly entirely ignorant, that England was then neither half so rich nor half so free as in the present times of which they complain;

and so strong is the propensity to believe our present state degenerated, that the poem of the *Deserted Village* has persuaded more people to believe the poverty and depopulation of England, than all the facts to the contrary detailed and arranged by the best historians and calculators have convinced of its prosperity.

In imitating Homer, the opposition orators have not forgot to call in fiction to their aid, and indeed they have, in this point, almost gone beyond their master; for at a time when liberty is rather bordering upon licence, and when commerce is in a more flourishing state than it ever before was in this or in any country, we are by them told, that liberty is almost fled, and that commerce is fast following.

Since then England has always seen the contests for liberty end in favour of the people, what reason can there be to fear, that at this time of the day we shall surrender what we have hitherto always defended with advantage: is there any ground for supposing, that at a time when all men are so tremblingly alive to the preservation of their liberties, we shall surrender up what we have always hitherto preserved, and which the Crown, to whom this supposed surrender is to be made, has so little power of attacking?

That it is the wish of the King's ministers to preserve a sufficient degree of power to render the executive government practicable, there can be no doubt; and in doing so, they do no more than their duty; but that they should aim at more is scarcely credible, and if they do, they must inevitably lose their labour.

A minister and a few courtiers may be corrupt, ambitious, or have wrong views, but would such a minister be seconded by a majority in both
houses

houses of parliament? or, could that be so, what would become of the public voice from without, which supports both houses, and against which we have never yet seen them venture to go on any important subject? What can a minister do without the support of the representatives of the people; and what can the representatives do if they are not supported by the people themselves? Have we not always seen, that the voice not of electors only, but of the public at large, has regulated most measures of great importance in this country?

First let us consider, what interest have ministers, who do not enjoy their places for life, to extend to any dangerous degree the power of their master; a power which would only serve to crush themselves when the hour of success should be over? Could they succeed in such an attempt against their own liberties and those of their fellow citizens, would it be their interest to desire it? certainly it would not. Of what then are we so much afraid? certainly of a very improbable danger, if it can at all deserve the name.

Let us however suppose, that a minister might be weak enough, and wicked enough, to attempt an invasion of our liberties, he could not succeed by any indirect attack that might escape observation, because, as soon as its operation was felt, he must be discovered, and then he would be certain himself to fall. Such a false step the constitution of this country easily enables us to recover, because any advantage that might be taken unawares, would be of too little importance to secure impunity to its contriver, or preservation to itself: therefore of such secret attacks we need not be in any fear, and as to open ones,

we have already seen that they are improbable, and almost, if not wholly impracticable; improbable, as being contrary to the interest of the minister, with whom they are supposed to originate, and almost impossible, as being totally opposite to the interests of those persons whose aid would be necessary in the enterprise.

The origin of these exaggerated fears of royal prerogative makes them not, however, unnatural, because it was royal prerogative that continually attacked our liberties before the full establishment of our rights at the Revolution, and because, in other kingdoms, it is the power of the king that puts in danger the liberties of the people. A minister in France, for example, before the Revolution, could, without either risk or trouble, or requiring any assistance, extend the power of the crown, and might, in many cases, profit by so doing; therefore what is unnatural and nearly impossible here, was very natural and possible there, as it is in all pure monarchies. It is not, therefore, to be wondered, as we see the dangers of prerogative in other nations, that we should, though without reason, feel some fears for ourselves.

Although it appears, that we are sufficiently out of danger from royal prerogative not to have any great occasion for fear upon that head, yet ought we never to be asleep or negligent of danger; and the part of those who watch over our liberties, in opposition to royal power, is both honourable and useful, provided they do not carry their zeal and exertions too far, and thereby bring on a greater danger than that which it is their business to prevent.

The danger which people guard against the least, is often that from which there is the
 2 most

most to be apprehended; and perhaps, upon a fair investigation, we shall find this to be the case with ourselves, and that a violent and indiscriminate opposition to the executive power is more dangerous to our liberties than the royal prerogative itself, which, as we have seen, is by no means very formidable.

As our liberties depend upon a nice balance between the legislative and executive powers, that balance once destroyed the whole is undone; and it matters little which end of the balance kicks the beam. Now, as we have already proved, that there is not much danger from the one side, let us proceed to prove, that there is very considerable danger from the other.

We have a very recent example of a mixt government being overturned in France by the power of the crown being too much diminished. The effects of this were very bad; first, it rendered the crown nearly useless, its power being too inconsiderable for carrying on the executive functions. It was therefore found inconvenient, and in order to remove that inconvenience, the legislative assembly rendered the crown odious to the people, and then, when it was attacked, it wanted power to preserve itself.

It will always be the case with an executive power, that is too feeble to put the laws properly and vigorously in execution, that it will be set aside, and some other substituted that it will not be so easy to counteract. Thus the committees of the Assembly, and its commissioners, with arbitrary powers, have been substituted in place of a king in France; and thus Cromwell in England performed the functions of a king, but with far more power than had ever been aspired to by his unfortunate master, whose blood he had shed
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under pretence of giving to the people that liberty which he ever after laboured but too successfully to take away.

In these two instances then we have seen, that the diminishing and debasing the executive power has been attended with the loss of that portion of liberty which the people before enjoyed. So much then for examples, which, being perfectly in point, render the progress of this affair a matter deserving of investigation.

A powerful opposition, in the first place, by rendering many measures ineffectual, must bring on great misfortunes, and those, in their turn, must produce discontent, which will be directed chiefly against the executive part of government, as that, according to the nature of things, will bear the blame of useless or ineffectual measures.

In the second place, opposition, as it fights under the popular banner of liberty and patriotism, has an opportunity of deceiving us and lulling us asleep, whereas every exertion of the crown awakens and puts us on our guard; and lastly, there is not the same power of retracting, in the case of the executive power being too much enfeebled, as there is in the other case already supposed, of its being incautiously suffered to become too strong.

Let us, for example's sake, suppose a case, that it is to be earnestly hoped will never be realised in England, that the King should, by the address of his ministers, or the corruption of Parliament, invade the rights of the people for a time; unless he has overturned the constitution altogether, a new parliament, by refusing to vote the supplies, may easily bring every thing back to its present state. Suppose, on the other hand, the parliament has increased its power by
diminish-

diminishing that of the crown, by what means is the balance to be re-established? There do not appear any in the constitution, and there could be none but what might result from a civil war, if such a struggle should happen to be favourable.

But what adds prodigiously to this danger, is the present state of the people's minds. Unluckily a number of abstract questions have been agitated in a way that tends to mislead, and theories that are purely for speculation have been laid down as practical guides; and as the great number, or mass of the people, cannot distinguish between the practicable and the impracticable, and between the true and false theories, but, on the contrary, are attracted by the brilliancy of what appears to be most perfect, it follows, that discontents and murmurs must arise, and that such have actually arisen, and, as it was to be expected, were begun by invective against the executive government; nor has even our matchless constitution itself escaped their censure.

A rage for reform and experiment has been introduced, but the possible consequences of reforms have not been attempted to be calculated by those who propose them, and who, grounding all their arguments upon the imperfections which the present state of things may be taxed with, (as may every work of man) fly boldly at once to the rash conclusion, that a reform must produce good.

Here it might be an object for a grammarian to enter into the strict meaning of the word reform; whatever its origin may be, its general acceptation in common affairs being an amendment, it naturally carries with it the idea of good effects; but then if it signifies a change that produces good effects, it is only to be determined
after

after these effects are known, whether the men who introduce it can be called reformers or innovators. If a reformer implies one employed in doing away abuses in existence, that man would ill deserve the name who made things worse, as a man who, from being a drunkard, left it off and became a thief, could scarcely be called a *reformed man*, although he had actually reformed his practice as to drinking. This is of more importance than might be imagined; for as reform gives the idea of mending or making better, it is very essential that men who only are innovators, should not receive the name of reformers, because, by that their efforts are prejudged, and in a manner that is decidedly in their favour.

To resist this rage for innovation, under the improper name of reform, this rage for wild theories, we have at least one very strong argument, which is the unexampled bad success of those who have cultivated the same things in a neighbouring kingdom. Had France been moderately successful, or even had she not been superlatively unfortunate in her attempts to reform, England would have been ruined infallibly; and even now it is but with difficulty that the unexampled degree of slavery, of wretchedness, blunders, and crimes, before our eyes, can disgust us with the flattering but ridiculous theories, by which we had very nearly been led away.

It is certainly not any reproach to the multitude to say, that abstract questions are too subtle for their discussion, because time and leisure are necessary for such purposes; and it is a melancholy truth, that argument and investigation do in general divide people in opinion instead of uniting them, so that the more they investigate, the more they dispute, and the more they dispute, the less
capable

capable they become of uniting their efforts for the happiness and welfare of society. On the contrary, difference of opinion renders them weak, and they generally become a prey to the despotism of the party that happens to be the strongest.

It is difficult to foresee what may be the end of so unprecedented a state of affairs as those that we are witness to in France, but it is not difficult to foresee, that it will not be favourable to the cause of liberty; and there is no danger in saying, that until time clears up the point, we should suspend all projected innovations; and that with regard to France one may freely say, "I see the man I ought to fly, but not the man I ought to follow."

The danger to us, then, from royal prerogative being commonly exaggerated, and being generally inferior to the danger arising from a too strong opposition to the executive power, it follows, that they are the truest patriots who support those measures of administration, upon which self-preservation, as a nation, depends; and that no anxiety should be entertained by reasonable men, on account of that continual clamour which certain persons think proper to keep up, apparently for the purpose of counteracting all the efforts of executive government.

Although it must be a matter of very difficult, as it certainly is of very important inquiry, to determine how far opposition to the measures of government ought to be countenanced, yet it cannot be very difficult to conceive, that while we are threatened by external or internal enemies, all those who love the present constitution ought to join in strengthening the executive government, by which it is defended; and at all events



we may conclude, that a general opposition to every measure proposed to support us against our enemies, is impolitic and dangerous in the extreme, as counteracting the efforts of the nation for its own safety and existence.

In private affairs we know our enemies to be those who are *continually* and indiscriminately opposing our designs, and our friends are those who oppose us in those designs only which seem to be wrong, but who aid us in those that are right.

We should hence be ready to conclude, that the spirit of a truly patriotic opposition would be, to keep a strong watch over the conduct of ministers, but only to oppose them when the general interest should require it.

Permit us here to examine this point a little more attentively, and we shall see, that an indiscriminate opposition to the measures of government has occasioned a great part of those debts under which we now groan, and the evils of which the members of opposition are so anxious to display in their full magnitude.

Since the principle of uninterrupted opposition has been adopted in practice, all our debts have been contracted, for at the Revolution we had hardly any debt. Was it not an opposition that deprived Britain of the advantages that would have arisen from the great Duke of Marlborough's victories? and was it not the half measures that opposition has occasioned, that have from that period until the American war rendered all our wars expensive, tedious, and useless? The American war too, which cost so much to this country, must have ended in victory, or have ended sooner, had those who opposed its beginning contented themselves with so doing; or, when once
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it had begun if they would not co-operate, had at least not endeavoured to enfeeble the efforts of the nation.

We who inhabit this kingdom are not to consider ourselves as requiring to be amused with debates in parliament, as children with fights and shows; the amusement costs too much: or if it is to be the case, if we are reduced to so humiliating a state by our capricious curiosity, that depraved taste ought to be suspended during a war, in which every man who has a bed to lie upon, or a pot to boil, is interested, as well as the rich proprietor; and wherein all fathers, husbands, or brothers, whatever be their rank in life, are so deeply concerned: a cause in which the proprietor of land, the merchant, and the mechanic, and every honest labourer who can shew his face in open day, is concerned in combating the shoeless, shirtless blackguard, who, having neither honesty nor industry, wishes for commotions in the state, that he may appropriate to himself the fruits of the industry of other men.

Either we must think, that the King, Lords, and Commons, are not capable of sanctioning a measure, or else, when it is once sanctioned, the execution is not to be counteracted, and our efforts rendered useless, by crippling the ministers in the execution of that will, by which the nation, according to our constitution, thinks and acts, and it is to be hoped, for our good, long will continue legally to think and act.

That the principle of a war is a proper object for opposition to discuss in the most free manner, there is no doubt, and when they can negative a declaration of war, it may perhaps sometimes be very fortunate for the nation; but if they cannot

prevent the war, nothing seems to be so contrary to common sense and good intention, and, it may be added, to the constitution itself, as to oppose it in its carrying on. A method has been dexterously employed hitherto to render an opposition to the execution of a war reconcileable with the constitution: we do not (say they) oppose the war, but the means proposed for carrying it on, of which we do not approve; and thus the question of war, already decided, is continually attacked under the form of a question yet to decide, so that the constitution is not violated in the form, but whether it be not often in the principle, is by no means so clear.

That every measure proposed for carrying on a war, which appears of an alarming nature, should be opposed, is certain; that every question that is brought before parliament should be discussed and examined, is not less certain; but why questions should be started by way of debating only, and thereby making the wheels of the state drag heavily, is another question?

Adapted to this last purpose only seem to be a great number of the questions agitated this year; at least those who are not initiated confidentially in the secret, cannot easily find out any other motive. First, because motions have been made, which they who made them well knew could not be carried; and secondly, because many motions have been made, that have no apparent end but to embarrass ministers, by occupying their time and attention, or to draw from them declarations or information, that it would be advantageous to our enemies to possess; but the knowledge of which could here produce no public good: or lastly, which, under the sacred right of liberty of speech, would give the honourable

nourable movers and their friends an opportunity of inflaming people's minds, and rendering the war less popular.

A few instances may serve to prove this as well as many. The motion in favour of M. de la Fayette seems to have been only made in order to throw oblique censure on the cause and conduct of the allied powers, and of kings in general, and at the same time to make a parade of the humanity, justice, and generosity of the party; certainly it was not a fit object for parliamentary interference; it might, perhaps, be an object of humanity, but could not be of justice, for whatever the merits or demerits of that unfortunate man may be, he has not been tried by any competent jurisdiction or court, and they are therefore as totally unknown to the British parliament as the individual merits or demerits of that immense number of English, Germans, and other strangers, who are shut up in prisons in France, by an order at least as arbitrary as that under which M. de la Fayette is detained. Of the same nature seems to be the motion made upon the judgement passed on those who have been guilty of seditious practices in Scotland. All men judged and found guilty by a fair jury, and competent court, stand precisely in the same predicament. A superior court (when there is one) can alone change the sentence, and by the constitution of these kingdoms, the King alone can mitigate the punishment. But here there is no superior court, and the King did not consider as objects of clemency men who had appeared to a fair jury as having acted against the constitution, which it is his Majesty's peculiar duty to preserve and protect. Certainly he must be admitted to have that right as well as these honourable
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gentlemen who made the motion, and to extend his clemency to men who persisted and gloried in their error, would have been a case without example, as without justice or wisdom.

The question of landing foreign troops in this country, was of a different nature, it was a question that demanded discussion and explanation; and certainly no blame but rather praise is due to those by whom it was agitated, who thereby cleared up those doubts which otherwise might have remained.

As to the still more recent question of the right of the subject to subscribe money for public purposes, under the disposition of Parliament, it is of all that ever have been agitated the most absurd. How strange it is that men who pretend to be Friends to the People, and to love liberty, should wish to deprive their fellow-citizens of so patriotic a liberty, as that of voluntarily assisting their country! destroy this natural privilege, make it unlawful, and treason against the constitution to *assist the Executive Government* in a measure sanctioned by Parliament, and (undoubtedly the protection of this country is included in the general question of the war) then it ought to be equally against the law to help a constable to apprehend a thief or a murderer, or to aid a magistrate in quelling a riot; for there is no solid argument in those nice distinctions of helping with money or with labour, provided the object to which the money is to be applied is known; for money is but the fruit of labour, and the measure of its value, and whether the thing or its price is given there can be no intrinsic difference. Besides it has undoubtedly been customary for corporations, associations, and even individuals, to offer bounties for soldiers and sailors, thereby aiding

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the Executive Government with money in a voluntary manner, and this has never been found to be unconstitutional till now, that the Minister wishes to take an effectual measure of making the heavy burthen of internal defence fall as much as he can upon the rich. His great offence then is, that he spares the poor what a general tax would levy from them, by exciting the rich to contribute voluntarily. This may defeat the views of those who wish to have the pleasure of railing against high taxes, and the burthens on the lower class; but it will scarcely be considered by any body as being attended with any other danger, and this is not so great a disadvantage, because it will keep that money in the pockets of all those who disapprove the plan, which a general tax would have taken out.

Such scruples are not only ill-timed, but are in themselves ridiculous: they seem to suppose liberty and the constitution of England so excessively delicate, as not to permit us, for whom they exist, to protect them by our individual efforts, in a cause sanctioned by our representatives in Parliament, constitutionally assembled.

Men who take time to reflect upon the matter, can never be imposed upon by such unfounded and absurd scruples.—Who will be persuaded that the constitution and liberties of England can ever be hurt by the Yeomanry of England, armed to defend their fire-sides? Who will believe that the crown wants to extend its power, by putting arms into the hands of men who are so much interested in preserving their liberties, and who perhaps understand them full as well as those who make long speeches. Such scruples are the more extraordinary, as they come from men who have never disguised their good opinion of the

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the French Revolution, where all means are used without any scruple, or any check, to obtain by good will, and by force, aid in money, and personal aid from every individual in that country.

It is however much to be lamented, that although the good sense of mankind sees through the end of such attempts, yet they still produce a bad effect; they encourage and augment discontents amongst those who are so inclined, and occasion considerable loss of time and expence.

Although there are many more examples, and recent ones, which it would be very easy to produce, in order to prove the evil effects of continual and indiscriminate opposition, (at the same time that we must acknowledge the utility of a party at all times ready to watch over the actions of Ministers) it is superfluous; as every day furnishes them, and sometimes of late one single day furnishes two or three such instances.

As our fears respecting the Royal prerogative are occasioned by the sad effects, which an undue extension of it would ultimately produce, let us see, on the other hand, what would be the ultimate consequences of a too successful opposition, in a case like the present.

Let us suppose, that either a dangerous and open resistance to government arises at home, or that a foreign enemy invades us from without, in either of these cases, which are only likely to take place under a feeble executive power, obstructed in its operations, and therefore set at defiance, the opposition must either throw itself into the arms of the executive government, or join the other party; but we were reasoning upon the supposition that the opposition was very powerful, then will the executive power either become at once very strong, or be anni-

annihilated. If it becomes very strong, then we fall into the danger that we wanted to avoid ; and if it is annihilated, another executive power must in the very instant rise up. If this executive power should consist of the House of Commons itself, then the legislative and executive authority being in the same hands, there could be no liberty ; and if it were put in any other hands, we should be just where we wish not to be, that is, under too strong an executive power.

The legislative power is superior to the executive, and will continue to be so naturally as long as we can avoid any violent crisis, any dangerous combination of circumstances, that by endangering every thing makes necessity the supreme law ; for then the executive usurps the legislative authority for the time, or, which is the same thing, obliges the legislature to obey. Let us therefore keep out of the reach of such a dangerous crisis ; let us aid the executive power in all cases of sedition or invasion before the crisis actually arrives, and then it is probable it will never come at all ; for to use the proverb, which though vulgar is applicable, " A stitch in time saves nine."

That this danger is not entirely hypothetical is clear, from the plan which, as we have already observed, was set on foot in France, in an early period of the revolution, to overturn the constitution of this country ; and we must not be above learning from our enemies, if we mean to do well. Let not then all the odium of punishing the internal enemies of the country fall upon the executive power ; let the public voice support the arm of justice in defeating the views of those men who have cast their plans of fortune on the destruction of their country. Let us not resemble the Chinese, who, when a fire was raging in a

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town that was built of wood, durst not attempt to extinguish it, until the slow Mandarin, with all his oriental forms, arrived and gave his orders. Perhaps no Englishman ever read the relation of this fact without a mixture of surprise and contempt; yet so it is, that our liberties, our constitution, which our good speech-makers will not suffer the winds of heaven to blow upon, are in their hands, like the Chinese houses: not that a fire has caught, but if a fire did catch, they would desire us to wait for the Mandarin.

May the man who dares in this country to defend arbitrary power, be pursued with still more rigour, than those who have dared to support the cause of anarchy under the specious appearance of reform; and while we are equally convinced of the dangers of both, let us endeavour to discover the just mean in which liberty and prerogative are so combined, as to give us both happiness and protection.

The reasonings already employed are applicable to all mixt governments, where freedom is established, but the degree of necessity that there may be for applying them, depends upon and may vary with circumstances. Thus, for example, if the Indian tribes in North America were more powerful than they are, the executive government of the United States would require to be strengthened and rendered more energetic; and on the contrary, if there were no Indian tribes, the executive government would only perhaps require power for the internal police of the country.

The present circumstances in which we are placed, seem to require, at least, as much power in the hands of the executive government, as was ever necessary at any former period. Nor is the danger precisely of the same nature as it has been.

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With respect to our enemies abroad, we have frequently had such as were more formidable, therefore it is not for the purpose of warlike attack, nor even of defence, that we require such force for the executive government, but it is against the mal-contents within, that our constitution and liberties require protection, because its enemies have a support from without, that they never had at any former period, and because that doctrine of liberty and equality, so insidiously misconstrued, and which never can exist but in a limited sense, and in the eye of the law, has been preached up in a general one, and extended to rank, fortune, and even to personal abilities. Never before was open protection offered by a nation to the discontented and seditious in all other countries, and never had example shewn the ignorant and the wicked how far a daring rashness, and a determination to stop at no crime would lead to success, in overturning order. Nor ever before had it been attempted to reduce insurrection to method and rule, therefore never were sedition-preachers before so dangerous. Other times have shewn the extreme of vice and of crime in individuals, but it was reserved for the Philosophers of the eighteenth century to exhibit the extreme of crime in a whole nation.

If there be any crime which claims pre-eminence in moral turpitude, and in the extent of the evil which it is calculated to produce, it is that of sowing sedition and discontent amongst a happy people; and now that the tree is so well known by its fruit, now that the example of France shews the unparalleled misfortunes that attend the leading astray the multitude, we can scarcely excuse those who attempt to do so, on the score of not foreseeing the consequences.—Never did a

foreign enemy, with the assistance of fire and the sword, reduce a people to such a state of poverty, slavery, and wretchedness, as that to which the French have reduced themselves. Thus is exemplified that great truth, that man alone can render himself completely miserable : nature supports us against evils brought on by others, but increases those which we bring upon ourselves, and makes them doubly severe ; and if ever the hand of the Omnipotent was visibly manifested, in attaching misery and madness to crime, it is in that wretched nation, and more particularly in those superiorly culpable individuals who have led on the rest.

The history of mankind shews, that in all ages and in all countries misfortunes have ever been the consequences of error, and that very few happy and free nations ever existed ; and, above all, history teaches us, by example, how prone men are to err. Can we then for one moment avoid drawing the conclusion, that as we are more free, flourishing, and happy than any nation recorded in history, it is unwise to risk that happiness in hopes of increasing it ? We should confine ourselves to those improvements that can be made without endangering the whole, though to risk that whole seems to be the system of the reforming demagogues of the present day, who have not even patience to wait with their innovations until the fate of those men, whom they wish us to imitate in so many leading points, shall be finally determined.

Does not the conduct of our present innovators and sedition-mongers, when opposed to the conduct of the nation at large, resemble the false mother and the true who came before Solomon to be judged, and might not their real regard for the constitution be decided in the same manner ?

Whatever a man is really attached to he does not wish rashly to risk ; and even a change for the better, without being reduced to an absolute certainty, costs the heart a pang. Those persons, then, who pretend to love the constitution, and yet wish to make innovations in a rash manner, act contrary to nature, or, in other words, their patriotism is a deception, and their affection for our liberties a scandalous barefaced imposition.

Before we quit this subject, let us take one more view of the affair of seditious practices.

A fair trial before a jury is all that men can have, and therefore the verdict is not to be called in question. But as our protectors of sedition talk of royal clemency, let them be put in mind, that the Sovereign cannot stretch his prerogative farther in any case, nor use it worse, than by pardoning men who have been found guilty and condemned to punishment, but who still persist in and glory in their crime. Even mercy, that most amiable of all the virtues, requires repentance in order to reconcile it with justice and policy : nor is there, perhaps, any constitutional method by which the King of England could ruin the nation, and overturn the constitution itself, so easily, as by a wrong exercise of this part of the royal prerogative ; and this with so much the more facility, that he would certainly not have to combat the present opposition upon such occasions.

Perhaps at a time when every question that regards our liberties is so freely discussed, it might be worth while to inquire, whether, when an individual has been fairly found guilty by a jury of his peers, it is not an infringement upon the rights of the society at large, in a public manner, to endeavour to render honourable what the laws have found
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to be criminal. Is not this a sort of resistance to the laws, and such as might of itself be construed into a crime? That it is a resistance of the law, as far as the moral part of the punishment goes, is clear, because it takes off its effect, and thereby encourages the crime.

A single instance will illustrate this; suppose a crime for which the pillory and hard labour for a month is the severest punishment the law can inflict, and that a set of men had entered into a subscription for every such criminal, who should be well paid for his time while at hard labour, and that while in the pillory they would surround him and do him homage, and publicly plead his cause. Could society exterminate crimes so protected, but by punishing the protectors, or by changing the punishment to something so severe, that neither money, nor the honour and fame lavished on him by his associates could pay the criminal? Who is it that can be sure that certain seditious persons have not been sent to Botany Bay in order to be out of the reach of those friends who, by flattering their vanity and supplying their wants, were they near at home, would convert their punishment into a reward? This question will perhaps some day become more important.*

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* Those who preach up reform, and who admire French liberty, and the duty of *insurrection*, should remember, that the French have invented a sort of counterpoise for insurrection, which is termed by them opposition to the national will (*opposition à la volonté nationale*). This they have made the most heinous of all crimes, and it is this crime that gives victims for the guillotine. Thus the philosophical sans culottes, who were the dupes of La Fayette's sacred duty of insurrection, are equally imposed upon by the sacredness of *national will*; for certainly it is carrying the law of sedition a little too far to punish with death seditious looks and gestures, and being suspected to be in connection with relations who are suspected of disobeying the
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With respect to juries, they are certainly, as we have already seen, bound to judge of the intention ; and the basis of all government is at an end if it ceases to be a crime to excite discontents against that government, because, although opinions are free, and speech is free, they are no farther so than actions are, that is to say, when they can do no harm. I may discharge my pistols in the air as long as I please, therefore I am free to fire my pistols ; but if some persons pass that may be injured by them, I am not at liberty to do it.

As to what writings or actions, therefore, are punishable, that is in a great measure dependent upon times and circumstances, from which the moral culpability and the evil tendency are to be discovered. As for example, a man who speaks seditious words in a tavern, when he is heated with wine, and may not fully understand the nature of these words, may be innocent of every bad intention ; but if such a man has been distinguished for spreading the same sort of principles before, and is known to be a man who well understands the meaning of his words, then there can be no doubt as to the intention.

It would be very easy to enter into this at large, and to prove by many arguments, that juries are bound to consider men who openly preach up innovation, at this time, as enemies to the constitution and the state, because they see that, from the experience of France, such innovations are very dangerous, and contrary to public good. But after what we have already observed, no doubt can be remaining upon that head ; and it is by juries doing their duty in cases of seditious prac-

tional will. Thus ignorance will always be imposed upon by artifice and knavery, and the moment an ignorant man becomes a philosopher, he is only fit to be made a dupe.

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tices, or libels against the state, that the arm of the executive power is to be strengthened in this time of danger, in order to keep off an emergency that might hazard all our liberties.

At the same time, let nothing more than what justice and policy strictly require be done by the judges who pass sentence, as no severity that seems disproportioned to the crime, although it may not in reality be so, ought by any means to be practised.

Now it appears, that wherever there is proof of sedition, to be obliged to pay a fine, to be imprisoned for a certain time, and find security for future good behaviour, could never be too severe as to its mode; and there is no objection to such mode of punishment (which can always be proportioned to the circumstances of the man and of the case) except the efforts of his abettors to convert his punishment into a triumph: and let those men take a hint, if they really wish well to those persons whom they push forward to open acts of sedition, and remember, that those men who dragged Mr. Frost to his house in triumph, were very likely dragging Messrs. Gerald and Margarot to Botany Bay. The law must prepare a punishment, and not a triumph, for whoever is found guilty.

Although jurymen find themselves very much embarrassed in general in cases of libel and sedition, where they are to determine between good intention, ignorance of the consequences, and bad intention, yet the present circumstances have at least one advantage, by taking that difficulty off their minds; for since the French revolution has taken so horrid a turn, since that people are become the most wicked and wretched that the earth ever bore upon its surface, and their government
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is become the most tyrannical that can be conceived, the criminal intention of those who, by instilling the same principles, would run the risk of leading us the same road, cannot be doubtful. The French levellers might at least plead ignorance of the consequences, but ours cannot.

It would be difficult to dwell upon this subject so long as it merits, and to treat it as it deserves, on account of its importance, is far beyond the power of him who attempts to investigate it; but let every man inquire of himself, if he is not conscious of being free in this country to do whatever is not hurtful to others, if his property is not secure, if trials are not conducted with justice? and let him recollect, that equality in the eye of the law is the only equality that ever did, or ever can exist, that all other equality is a speculative, absurd, and impracticable chimera; that if it could exist, it would be at open war with liberty, which leaves a man free to labour, and with security, which preserves to him what his labour has produced.

Let every true Englishman ask of himself if, as long as the yeomanry are armed, and we have a trial by a jury of our peers, the power of the crown can take away our liberties, and let him produce any act by which it appears that our liberties are endangered, or that even a desire of injuring them has been manifested? and let those fortunate individuals, who have arms put into their hands, or who have the high honour of being called upon juries for attacks upon their country, reflect, that it is by them that the first attacks upon all that we hold dear to us is to be repulsed; that their duty to their country should take place of every personal consideration.

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It is by such a conduct that posterity will judge of our wisdom and virtue, and that we shall be able to transmit to our children, unfulfilled and unaltered, THAT PRECIOUS WORK OF OUR FOREFATHERS, THE BRITISH CONSTITUTION,

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